As is the tradition for this book, as it moves into its fourth decade, *Criminal Law: Cases and Materials* aims to introduce students to the basic purposes, concepts, doctrines, and analytic techniques of the substantive criminal law. Our foundational premise is that the substantive criminal law is a statutory as well as a “common law” subject. While the substantive criminal law, like other basic law courses, introduces students to the art of common law reasoning, this book not only teaches lawyers-to-be to construe and apply express legislative rules of liability but also to understand the fundamental concepts that are just as often presupposed in criminal codes. We expose students to alternative statutory formulations of offenses and defenses and enable students to become familiar with the influential Model Penal Code. This book emphasizes the crucial skills of element analysis, and illuminates the considerations of social policy and moral principle that inform the interpretation, application, and evaluation of criminal statutes.

Of course, this book participates in the classic pedagogic tradition of relying on appellate decisions in actual cases to explicate the doctrines and policy dilemmas of the criminal law. The book’s introduction explains just how these cases arise, what kinds of substantive criminal law issues come up on appeal, what sources of law appellate courts bring to bear on these issues, and what methods of reasoning and argument the courts use to resolve them. We continue to include some of the most venerable of the illustrative cases, but we also add very recent cases that capture newer developments in this constantly changing field of law.

Since its inception, however, this book has always been more than a collection of cases. It continues to interweave judicial opinions with statutory material, sociological accounts of crime, historical accounts of the development of the criminal law, and philosophical arguments about criminal justice. Thus, we continue our commitment to place the substantive criminal law in a realistic social setting in which inequality—whether based on race, gender, or poverty—plays an undeniable role.

But our commitment is also to pedagogical clarity, so we include throughout the book introductory and transitional material that provides straightforward explanations of the alternative rules applied in each doctrinal area. The notes that follow principal cases are organized and labeled by legal issue so that students’ thinking can be focused on the most pressing questions raised by the
cases. And at key points in the text, we interweave problems and exercises to help students master the analytic skills emphasized throughout the book.

Chapter 1, on the purposes and limits of punishment, continues to focus on the policy controversy over historically high incarceration rates, along with the causes and implications of fluctuating crime rates. It includes a comprehensive treatment of Eighth Amendment proportionality, now enriched by the important new Supreme Court cases on the legality of life-without-possibility-of-parole sentences for juveniles. As in the previous edition, we place our discussion of proportionality limits on death sentences in this chapter (with references back to it when we turn directly to capital murder in Chapter 7) so as to provide a unified picture of the themes of proportionality.

Chapter 2, “The Criminal Act,” continues its coverage of voluntary acts, possession, harm, omissions, status crimes, prospectivity, legality, and specificity. In addition to our very contemporary treatment of possession doctrine applied to computer files, we enhance the relevance of this material with an important new case on void-for-vagueness attacks on statutes governing the homeless, as well as a deeper historical account of overbreadth.

Chapter 3, “The Guilty Mind,” continues to explore the question of whether and when criminal liability depends on culpability. It distinguishes different culpable mental states and trains students to construct the mental elements of statutory offenses. Finally, it examines the special problems of mistake of law and capacity for mens rea. We have added the striking new case of State v. Adkins on Florida’s controversial strict liability drug laws, as well as the important new Supreme Court Elonis case on default mens rea.

Chapter 4, on causation, continues to pose the problem of why and how we assign causal responsibility for harmful results. It also analyzes the doctrinal structure of causation by exploring the nuances of causation-in-fact, proximate causation, direct causation, and causation by omission.

Chapter 5, “Intentional Homicide,” continues to illustrate the concepts of intent and premeditation. It explores the moral dilemmas posed by the problem of whether and how emotional distress can mitigate murder liability in a society riven by controversies over cultural diversity and gender inequality. In particular, we add new commentary exploring the so-called “gay panic defense” and “trans panic defense.”

Chapter 6, “Unintentional Homicide,” distinguishes involuntary manslaughter, extreme indifference murder, and felony murder. The section on felony murder is informed by research on the historical and normative underpinnings of felony murder liability, reported in Guyora Binder’s new book Felony Murder (2012). In addition, we now break out the iconic People v. Washington case as a full principal case, so as to better frame the various killer-victim permutations that complicate this area.

The newly streamlined Chapter 7, on capital murder, now narrows its focus to the operation of capital murder statutes as sentencing schemes requiring a structured assessment of aggravating and mitigating factors. While the last few years have not produced striking new changes, we include an eloquent dissent by Justice Breyer that offers a searing critical reassessment of the state of American death penalty law and practice.

Chapter 8, on necessary force, lesser evils, and duress, adds a new note on “so-called Stand Your Ground Laws,” as well as a the dramatic Erdemovic case involving duress and military orders.
Chapter 9, on insanity, continues its enhanced focus on the newer cognitive tests. It adds new material on the state of the law in regard to the various relationships between insanity and intoxication, and on multiple personality disorder.

Chapter 10, “Attempt,” adds new commentary on the doctrine of reckless endangerment, as well the California case of People v. Bland, which comprehensively but efficiently captures the forms of “transferred intent” for inchoate crimes.

Chapter 11, “Complicity,” continues its approach of separately examining the actus reus and mens rea of complicity. It adds as a new principal case the Supreme Court’s recent decision in Rosemond v. United States on accomplice liability for secondary crimes. This chapter includes a brief treatment of the criminal liability of corporations.

Chapter 12, “Conspiracy,” adds to the original closing section on the federal racketeering enterprise (RICO) law an up-to-date treatment of the very aggressive “street gang enhancement” laws that are modeled on RICO principles.

Chapter 13, “Rape,” continues to take account of law reform efforts and scholarly research in this rapidly changing field of law; it also continues to offer a comparison and precise element analysis of the broad range of alternative definitions of sexual assault offenses. It now includes the recent history of efforts by the American Law Institute to revise the very dated Model Penal Code rule on rape and move toward an affirmative consent standard.

Chapter 14, “Theft Offenses,” continues to include lively case law on theft-based white collar crimes, including mail fraud and bribery. Its treatment of white collar crime and fraud now includes a provocative set of opinions by Judges Posner and Easterbrook in a bank fraud case that occurs in the wake of the mortgage crisis of 2008.

Chapter 15, “Perjury, False Statements, and Obstruction of Justice,” continues to focus on federal criminal law. In recent decades, federal prosecutors have increasingly and controversially used their investigatory powers to incriminate suspects in these collateral crimes. This practice poses some of the same fundamental questions about law enforcement discretion raised by the vagrancy, possession, attempt, and conspiracy offenses explored in earlier chapters. We have added several new perjury and obstruction cases, including the very controversial prosecution of baseball star Barry Bonds.

The point at which government takes a person’s life or liberty and justifies it by denouncing that person’s actions, purposes, and character is the law’s most powerful manifestation. The criminal law therefore poses the most important challenge to our responsibility as citizens to understand, to evaluate, and to improve the law that is enforced in our name. We hope this new book helps our students meet that challenge.

Guyora Binder
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